



FOGEL & POTAMIANOS LLP

2026 GC CHECKLIST

**The Law Firm That
Makes Things Happen.**

Risk Reduction, Strategy & Cost

- Every business decision invites risk into the organization. A checklist helps company leadership accurately catalog, assess, and reduce their risk exposure.
- Regular, focused, and strategic meetings help companies become proactive rather than reactive.
- Preventive law is less expensive than paying for cleanup.

RISK FACTORS

95 Factors

- F&P has identified 95 risk factors for privately held middle market companies. To this end, we recommend a periodic, standing meeting to cover the following topics and upcoming plans on the horizon.

CORPORATE GOVERNANCE

- Corporate Structure
- Corporate Organizational Chart (showing ownership, subsidiaries, affiliates)
- Complete Corporate Governance History from Inception to Current (certificates, bylaws, organizational documents, board minutes)
- Board - governance, composition, and refreshment
- Board Minutes and Records – risk reduction for Section 220 demands

- ❑ Flow of Information to Board – finding submaterial problems before they become material
- ❑ Annual Director and Officer Questionnaire (conflict of interest)

EQUITY

- ❑ Complete and Updated Cap Table
- ❑ Complete List of Options & Warrants
- ❑ Equity Plans
- ❑ 409A Valuations
- ❑ SEC Exemption Compliance & Filings
- ❑ Cap Table Management & Strategy
- ❑ End of Year Investor Update (Live or Letter)
- ❑ Company Option Pool

COMPLIANCE & CONTRACTS

- ❑ Compliance – prevent, detect, remedy
- ❑ Negotiation of Agreements and Partnerships
- ❑ Vendor/Supplier Agreements – list of fully executed copies of agreements, termination, consents required
- ❑ Form Agreements
- ❑ Office Leases

- ❑ Insurance Coverage – cybersecurity, D&O, business interruption
- ❑ Regulatory Issues – import/export, product safety, CBP, tariffs, etc
- ❑ CPA
- ❑ Managing Outside Counsel
- ❑ Assignment Clauses - include assignment clauses in agreements which permit assignment in the event of a reorganization, merger, or control sale
- ❑ Corporate Transparency Act
- ❑ Tariffs, Supply Chains & Duty Mitigation Strategies
- ❑ AI Governance – governing charter for internal AI use and governing outside vendor/partner AI Use
- ❑ Master Services Agreement (MSA) – developing market and commercially tailored terms to the business, allocating risk, and supporting cost effective and timely execution

CAPITAL MARKETS, LIQUIDITY, & FINANCING

- ❑ Private Equity
- ❑ Convertible Notes
- ❑ SAFE Notes
- ❑ Debt, Lines of Credit
- ❑ Current UCC Filings
- ❑ Asset Sales

- CFO
- Process to Monitor Negative Cash flow
- Liquidity Strategy – preserve cash, extend liquidity runway
- Alternative Strategies – Chapter 11 for reset of balance sheet and restructure of operations
- BK 11 Subchapter 5 – less than \$7.5MM in debt.
- Security Registry and Tracking
- Guarantees and Credit Parties
- Disaster Loan/PPP Compliance
- Financial Controls & Checks
- Secondary Sale Process

M&A

- Acquisition Strategy / Divestiture Strategy
- Acquisition Target List
- Partnership Exploration
- Current Discussions / NDAs
- LOIs
- Due Diligence

- Closings
- Board M&A Subcommittee Participation
- Due Diligence Preparation – e.g. third party consents for change of control
- Choice of Law Considerations - e.g. Delaware is contractarian, meaning deal is what it is on paper in front of judges.
- Hart-Scott Rodino Antitrust Improvements Act (HSR Act) - premerger notification responsibilities to FTC.

INTELLECTUAL PROPERTY

- Company IP Document List (owner, filing, registration, date, matter covered)
- Branding Strategy
- Trademark Portfolio Strategy – national & international
- Patent Portfolio Strategy – national & international
- Copyrights
- Trade Secrets
- Licensing Strategies
- NDAs
- Creators and Contractors – fully executed IP/copyright assignment

- Potential Infringing Competitors
- Infringement Exposure
- Active Policing of Intellectual Property
- 3rd Party Licenses – track licensing, restrictions, and obligations (e.g. open-source software, software, etc.).

EMPLOYMENT

- Executive Employment Agreements
- Defining Culture and HR Policies & Procedures
- Furlough/Layoff/Force Reduction Strategy
- Employment Policies– employee handbook, supporting policies/ forms, offer letters, incentive compensation plan, NDA/ confidentiality, arbitration agreement, separation (severance) agreements, injury and illness prevention, etc.
- Classification
- Payroll Compliance
- Remote Working Compliance
- Return to Work Policies
- Safety Policies
- Coordination of Outside Employment Counsel

LITIGATION RISK

- COVID – OSHA, CAL/OSHA, penalties, criminal liability
- Employees – harassment, WC, FMLA, rest periods, overtime, employee/IC classification, retaliation, whistleblower, accommodation, Private Attorney General Act (PAGA)
- Breach of Contract – clients, vendors, partners
- Cybersecurity – 2 factor authentication and employee training. Do you have information security policies, and are you doing it?
- Categories of Personal Information – how processed, stored, shared, and protected
- Internal Policies and Procedures for Privacy and Data
- Current Privacy Regulations– CCPA, GDPR, FTC Section 5, ePrivacy Directive, COPPA, Gramm-Leach Biley Act (GLBA), HIPAA, California Privacy Rights Act (CPRA) – 2023, Virginia Consumer Data Privacy Act (VCDPA) - 2023, Colorado Privacy Act (ColoPA) – 2023, Utah Consumer Privacy Act (UCPA) – 2023, Connecticut Public Act No. 22-15 – 2023, Quebec’s Bill 64 PR Crisis Strategy, UK, India, Australia, Canada
- Disaster Recovery Plans and Technology
- Litigation Bench Strength
- AI – copyright risk and AI-generated content ownership disputes
- Crisis Management – assessment, crisis team formation, decision making (what decisions need to be made in 20 minutes, within 2 hours, by tomorrow, and later?), media/PR plan and execution, and post-mortem analysis
- AI Chatbot sessions – not privileged and are discoverable
- Risk Exposure for New Litigation Trends - class actions and consumer protection, consumer data protection, AI and intellectual property disputes, regulatory investigations, ADA website compliance, trap and trace lawsuits (CA), patent infringement trolls (website features), FTC deceptive and false advertising



Thank You

Jerome Fogel, Esq.



+1 866-268-2787 ext. 101



jfogel@fpgeneralcounsel.com



www.fpgeneralcounsel.com